

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

AGRANA FRUIT SERVICES, INC.	:	Case No. 1:07 CV 3887
	:	
Plaintiff,	:	
	:	JUDGE KATHLEEN O'MALLEY
v.	:	
	:	
IVAN WARE & SON, INC. d/b/a/ WARE,	:	<u>ORDER</u>
	:	
Defendant.	:	

This case is before the Court on the Plaintiff's *Motion to Remand* (Doc. 7), filed on January 28, 2008. On February 6, 2008, the Defendant filed a response *consenting* to remand to State Court (Doc. 9.) As explained in further detail below, the Plaintiff's *Motion to Remand* is hereby **GRANTED**.

This case was originally filed in the Cuyahoga County Court of Common Pleas. *See* Doc. 1. On December 27, 2007, the Defendant filed a notice of removal on the basis of diversity jurisdiction under 28 U.S.C. § 1332(a)(1). *Id.* The Plaintiff's motion for remand does not contest the diversity of the parties, but argues that this Court cannot exercise diversity jurisdiction under § 1332(a) because the amount in controversy is less than \$75,000.00. *See* Doc. 7.

"If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c). "All doubts as to the propriety of removal are resolved in favor of remand." *Coyne v. Am. Tobacco Co.*, 183 F.3d 488, 493 (6<sup>th</sup> Cir. 1999). In the face of a motion to remand, the removing party has the burden of proving that removal is proper. *Rogers v. Wal-Mart Stores, Inc.*, 230 F.3d 868, 871 (6<sup>th</sup> Cir. 2000), *cert. denied* 532 U.S. 953 (2001).



In this case, the removing party – the Defendant -- is not even attempting to argue that this Court has jurisdiction. Instead, the Defendant *consents* to remand based on the Plaintiff's declaration that the amount in controversy is less than \$75,000.00. *See* Doc. 7-3. Specifically, the Plaintiff stated in a sworn declaration that they are seeking \$38,293.84 in compensatory damages and not more than \$15,000.00 in consequential and incidental damages. *Id.* Therefore, the motion to remand is *unopposed*.

Accordingly, the amount in controversy requirement of 28 U.S.C. § 1332(a) has not been satisfied and the Court does not have subject-matter jurisdiction over this case. The Plaintiff's motion to remand (Doc. 7) is **GRANTED as unopposed**.

**IT IS SO ORDERED.**

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**s/Kathleen M. O'Malley**  
**KATHLEEN McDONALD O'MALLEY**  
**UNITED STATES DISTRICT JUDGE**

DATED: February 19, 2008